

1 alive a license where there's no actual station, there's no main
2 station.

3 So, I am totally confused as to --- if I am correct and
4 we can all agree on these facts that they discontinued, they sold
5 the spectrum, the buyers are not operating the stations, the buyers
6 have no plans to ever operate the stations, the buyers simply want
7 to use the spectrum for what they call "fill-in," if we agree on
8 those facts, I think we can argue the law.

9 I think what Maritime is trying to do is create some sort
10 of geographic license for people and then sell it. A geographic
11 license, you can build whatever you want within an area, and that's
12 not a geographic license; they have site-based license, so I think
13 if -- I'd like to, first of all, find out if anyone disagrees with
14 my understanding of the facts. I think it's plain from the
15 testimony. And if I'm correct as to the facts, I would like to
16 understand what the legal theory is by which Maritime -- if they
17 were going to file -- I filed my motion for summary judgment, and
18 I didn't want to inconvenience anyone. I wanted to give people
19 notice in advance. I didn't have to file my trial brief until a
20 week before the hearing and tell everyone what my legal theory is,
21 but I put it out there now, and said this is my theory of the case.
22 These are not -- you can't have a fill-in station where there's no
23 station. And I put it out there for the world to see. I gave Mr.
24 Keller a six weeks advance notice of how to structure his --
25 restructure his case to try to meet my argument.

1 If they have a legal theory as to how Maritime can retain
2 these licenses, and they want to file a cross motion for summary
3 decision, I would love to see what it is, and what it's based on.

4 JUDGE SIPPEL: Well, see, that is a possibility, and
5 that's one of the procedures that Ms. Kane proffered. But let me
6 ask Mr. Sheldon, since you have some interest in this with Puget
7 Sound. What Mr. Stenger just said, does that meet with -- do you
8 see any pluses or minuses about it? Do you have any objections or
9 theories about that?

10 MR. SHELTON: Yes. I mean, I do object to the
11 characterization of the facts because I don't have all the facts in
12 front of me right now.

13 JUDGE SIPPEL: Okay.

14 MR. SHELTON: But I know it's a simple statement that
15 cancellation of the five licenses that Puget is trying to acquire
16 would be equivalent to operating under the geographic licenses. My
17 client did put in answers to the Bureau's interrogatories in which
18 they explained that loss of those five licenses would cause both
19 operational and financial hardship to my client, that they would
20 not have the same operational flexibility under the geographic
21 licenses, so we would not view it as equivalent to just have a
22 procedure to cancel the MCLM licenses.

23 Basically, Puget Sound has agreed to maintain as little
24 involvement in this case as possible, just being perfectly candid
25 --

1 JUDGE SIPPEL: Yes.

2 MR. SHELDON: -- as between Maritime and Mr. Havens and
3 his companies. But as my client stated in the interrogatories, it
4 would not be equivalent to cancel the site-base licenses and just
5 operate under the geographic licenses. But I don't have all the
6 facts to be able to rebut point by point what those impacts would
7 be.

8 JUDGE SIPPEL: Okay. What I understand, and this is based
9 on what Mr. Stenger has written, that -- what I read before from
10 Mr. Stenger's -- this was your proposed discovery schedule.

11 MS. KANE: Your Honor --

12 JUDGE SIPPEL: Let me just finish what I'm going to say.
13 Okay?

14 MS. KANE: Okay.

15 JUDGE SIPPEL: If you have the geographic, he's suggesting
16 that you don't need the site-based. But you want the site-based
17 because you want to use their spectrum for fill-ins within the
18 geographic. That's what your client wants to do. That may -- I'm
19 not suggesting that that is wrong. I'm just suggesting that there's
20 a case that -- it depends the way that you approach that. But,
21 basically, I think -- isn't that the scenario that we're talking
22 about?

23 MR. STENGER: No, Your Honor.

24 JUDGE SIPPEL: We're not?

25 MR. STENGER: As a geographic licensee they can place

1 radios anywhere they want within their geographic area.

2 JUDGE SIPPEL: Okay.

3 MR. STENGER: And the -- they -- if there was a valid
4 site-based licensee there, they would have to protect and avoid
5 putting a radio where Maritime's station is, so they bought out
6 Maritime's licenses so that they wouldn't have to protect --

7 JUDGE SIPPEL: On the site-based.

8 MR. STENGER: So that they would be free to put their
9 radios anywhere they want to in their geographic area. That's how
10 I read their sworn answers to interrogatories. They said we have
11 geographic spectrum that covers our entire utility area. We put
12 radios wherever we want, but to give ourselves flexibility and not
13 have to protect Maritime's stations, we bought out Maritime.

14 Now, they did say that if Maritime's licenses are all
15 cancelled and they have the geographic area, they can still put
16 licenses wherever they want within their area, but they said in the
17 northernmost border and in the southernmost border they might lose
18 something. They feel like having Maritime's licenses gives them a
19 little more on the northern border, which is really Canada. And
20 they have some facilities right on the Canadian border, and they
21 claim that having a site-based license gives them more radio
22 flexibility than if they had the geographic license, which hits
23 exactly the same border.

24 In the southern area they said it would hurt them if they
25 didn't have Maritime's site-based license, but they never gave any

1 explanation. They never said what facilities they have in the
2 south, no explanation. In the north, they said they would have to
3 add some more radios, and it would be a non-trivial expense to
4 build some more -- basically, to build some more radio cells so you
5 can be right against the border without spilling over. And they
6 said they would have to go to the Public Utility Commission and get
7 permission to spend some money to build some more radios.

8 MS. KANE: Your Honor --

9 MR. STENGER: But my argument is --

10 MS. KANE: -- we're getting off track here. He's just
11 arguing a motion for summary decision that no party has had an
12 opportunity to respond to. And, you know, I think we started out at
13 this point trying to figure out should we proceed with a hearing on
14 Issue G, and whether or not we should have motions practice in lieu
15 of a hearing.

16 You know, all Mr. Stenger has been arguing is the basis
17 for his motion for summary decision, which you haven't even ruled
18 was properly filed. And if we're going to get into legal arguments
19 for a motion for summary decision, respectfully, I don't think this
20 is the time or place for that.

21 JUDGE SIPPEL: That's true. That's true.

22 MS. KANE: The Bureau should have an opportunity to be
23 able to respond, as should Maritime and other parties.

24 With regard to the issue of whether or not the parties
25 could jointly file a motion, which is what I thought Your Honor had

1 proposed to resolve the case, and that meant all parties, you know,
2 we note for the record that we tried on multiple occasions to work
3 with Mr. Havens and with Mr. Stenger in terms of the factual
4 stipulations on the 153 licenses that we -- Maritime and the Bureau
5 -- agreed to stipulate to with regard to their permanent
6 discontinuance.

7 As you may recall from the record, both Mr. Stenger's
8 clients and Mr. Havens' refused to agree even to the factual basis
9 underpinning those stipulations, which were very basic similar
10 facts to what Mr. Stenger is now arguing he would somehow agree to.
11 So, I -- those facts were -- Maritime was admitting it hadn't
12 operated those stations, it had no intention of operating those
13 stations, and yet Mr. Havens utterly refused, as did Mr. Stenger's
14 clients, to agree to those basic underpinning facts. So, I
15 personally do not see any way that the Bureau and Maritime could
16 join Mr. Havens in even agreeing to the underlying facts for a
17 motion for summary decision. Even as Mr. Stenger is sitting here
18 today, he's misrepresenting the record. And, in fact, he is unable
19 to even view some of the written direct testimony and some of the
20 exhibits in this case because they've been deemed confidential, and
21 he hasn't had the opportunity to review what, for example, Mr.
22 Trammel has said about what Choctaw might do with these stations;
23 and, yet, he's articulating, you know, or opining on what it is
24 that these facts might be. He hasn't even had an opportunity to
25 review the entirety of the record.

1 JUDGE SIPPEL: All right. I'm going to table --

2 MR. STENGER: Could I respond?

3 JUDGE SIPPEL: -- my suggestion now. It's off the table.

4 MR. STENGER: Well, let me just respond to --

5 JUDGE SIPPEL: Do you think --

6 MR. STENGER: -- her saying that I've misrepresented
7 things. Can I respond to that?

8 JUDGE SIPPEL: Briefly.

9 MR. STENGER: Okay.

10 JUDGE SIPPEL: Very briefly.

11 MR. STENGER: My client saw no need to sign a stipulation.
12 We are not the licensee, we're not subject to a revocation hearing.
13 And what I was suggesting about the motion for summary decision,
14 not that we can all agree on the facts, but that cross motions for
15 summary decision should be a fairly simple matter for Your Honor to
16 rule upon and to go forward with because my motion for summary
17 decision assumes as true and correct everything that they've put in
18 their direct case. So, if they were to file a motion based on those
19 --

20 JUDGE SIPPEL: Wait a minute. You just wanted to address
21 the fact that you were misrepresenting facts. I gave you a chance
22 --

23 MR. STENGER: I'm not sure what --

24 JUDGE SIPPEL: I know exact -- if you want -- now, cross
25 motions is a step beyond what I was talking about.

1 MR. STENGER: Oh, okay.

2 JUDGE SIPPEL: If we want to get into cross motion for
3 summary, that's another issue, and I'm losing time here. You all
4 may want to think about that. If you want to proceed by cross
5 motions, I would entertain a suggestion to do that, but I want to
6 do that at a different time, not now. So, the question -- and we
7 can leave your summary decision motion hanging, just hanging fire
8 until I get an answer on that one. In other words, nobody's under
9 an obligation to respond to it at any given time.

10 MS. KANE: Your Honor, we would have a question. If Your
11 Honor is going to suspend the hearing and you would rather us try
12 to resolve Issue G through motions practice, whether it be joint or
13 counter motions, or cross motions, however you want to characterize
14 the motions practice, but that we resolve it through motions
15 practice and not a hearing, then we would ask that we suspend the
16 trial briefing schedule and come up with a briefing schedule for
17 summary decision motions.

18 JUDGE SIPPEL: Obviously.

19 MS. KANE: And that at least in lieu of the Bureau being
20 obligated to respond to Mr. Stenger's motion by Monday.

21 JUDGE SIPPEL: You don't have to respond. I just said
22 that.

23 MR. STENGER: I wouldn't mind --

24 JUDGE SIPPEL: Everything is suspended right now.

25 MR. STENGER: Well, Your Honor, I wouldn't mind them

1 having a brief extension to respond, but --

2 JUDGE SIPPEL: No, wait a minute. I'm putting it on
3 freeze.

4 MR. STENGER: But I would like to have -- I put --

5 JUDGE SIPPEL: Not a target date.

6 MR. STENGER: But I put my -- I put everyone on notice of
7 my theory of the case long before the hearing.

8 JUDGE SIPPEL: Good.

9 MR. STENGER: I would like to have a response from them
10 and hear what their theory of the case is --

11 JUDGE SIPPEL: Their theory is going to be in their trial
12 brief. It's not going to be -- let me just move forward. I'm not
13 sure whether I got any place or not on that, but we'll find out.

14 Okay. So -- and by the way, I gave that dictum on summary
15 decision July 15, 2014. This was not done yesterday, about no
16 summary decisions. But be that as it may, I want to move on to the
17 next thing.

18 Well, the other objection is you say that the Bureau
19 direct case testimony doesn't comply with the Act, the rules, and
20 the HDO. I'm talking to Mr. Stenger. I give no credence at all to
21 that argument. That's telling them how to try their case, and I
22 don't have any time to spend on that, period.

23 MS. KANE: Well, in light of that, Your Honor, we would
24 move that all of the Bureau's direct case, its written direct
25 testimony and its exhibits be deemed admitted into the record

1 because Mr. Havens' and Mr. Stenger's clients have provided no
2 specific objections to the Bureau's case under the evidentiary
3 rules.

4 JUDGE SIPPEL: Are you joining in that, Mr. Keller?

5 MR. KELLER: I agree with the motion. I'm not --

6 JUDGE SIPPEL: Okay.

7 MR. KELLER: I mean, it's not for me to move the admission
8 of their exhibits, but I don't object to that.

9 JUDGE SIPPEL: Okay. And you have an objection, Mr.
10 Stenger.

11 MR. STENGER: Well, as I said, Your Honor, the problem
12 with the procedure that's being followed -- remember in the normal
13 hearing, I --

14 JUDGE SIPPEL: I don't want to get into that. I told you.

15 MR. STENGER: Okay.

16 JUDGE SIPPEL: I don't want to get into that. You're
17 telling them what to do in the normal course of event -- you have
18 no authority to do that. That's an insult, and I want to get off
19 that track. Yes, the motion is granted.

20 (Whereupon, the above-referred to documents previously
21 marked as EB Exhibits 1A-1G, 38-97 for identification,
22 were received in evidence.)

23 MS. KANE: Thank you, Your Honor.

24 JUDGE SIPPEL: Let's move on.

25 MS. KANE: Well, Your Honor, they rely on that same

1 argument that you hold no credence to for why their documents
2 should be admitted. We provided detailed written objections under
3 the Federal Rules of Evidence to each one of -- all but 70 of their
4 440 plus exhibits, and they've provided no substantive response
5 based on the Rules of Evidence. They simply relied on their same
6 theory that they don't agree with the posture that the Bureau is
7 taking.

8 MR. STENGER: No, that's not --

9 MS. KANE: So, we would deem that - we would ask that all
10 of those documents be stricken from the record, other than the 70
11 to which the Bureau had no objection.

12 MR. STENGER: That's not correct, Your Honor. Your Honor
13 asked for an explanation of the relevance and justification for the
14 documents previously, which we provided. We provided a list of all
15 of our documents with explanations of why they were relevant, and
16 then they filed an objection in response to that.

17 If what Ms. Kane is saying is that she wanted me to come
18 back and say again the same thing that I had already said, I didn't
19 come back in a response and repeat everything that I said. So, we
20 are resting on --

21 MS. KANE: Your Honor --

22 JUDGE SIPPEL: Wait a minute. Let him finish. Let him
23 finish. I'm sorry. Let him finish.

24 MR. STENGER: In our -- there was a point in time where
25 you wanted a list of documents with explanations of their

1 relevance.

2 JUDGE SIPPEL: Yes.

3 MR. STENGER: And we provided that.

4 JUDGE SIPPEL: I didn't think too highly of it.

5 MR. STENGER: Well, nevertheless, Your Honor, it's -- my
6 understanding of the procedure was we put forth our arguments for
7 relevancy, they put forth their objections, and then you rule on
8 it. So, to say that I didn't come back and give the same
9 explanation a second time is sort of inconsistent with complaining
10 that I'm filing too many things. You know, we have our reasoning,
11 and they have their objections. We're happy to have Your Honor rule
12 based on that, but it's not fair to say that we gave no reasons. We
13 filed those, you know, weeks ago to give everyone notice.

14 JUDGE SIPPEL: Well, I've seen --

15 MS. KANE: What we articulated, Your Honor, for the record
16 --

17 JUDGE SIPPEL: Pardon?

18 MS. KANE: -- is that -- Your Honor's order from, I
19 believe it was July, or August order that -- August 21st order,
20 14M-27 that set the procedural schedule, identified the opportunity
21 for all parties to provide written objections to each party's
22 direct case, and then for those parties whose exhibits were being
23 objected to, to provide responses. What I articulated was not that
24 they didn't provide reasonings in their list of documents with
25 explanations that had been submitted weeks earlier, but that they

1 had not complied with the Judge's -- Your Honor's order to provide
2 responses to the very specific objections that we had detailed with
3 regard to each of their 440 exhibits. Saying that a document is
4 relevant three weeks earlier does not respond to objections under
5 the relevance rules for hearsay, I mean, for relevance rules, or
6 the hearsay allegations that we raise, or improper character. They
7 have no responses to those objections, so to the extent that they
8 have no objection, and they've provided no objection by the time
9 that this Judge -- this Court ordered we would deem that all of
10 those -- we would ask Your Honor to deem that all of those exhibits
11 be stricken from the record.

12 JUDGE SIPPEL: I'm not striking them right now. I'm just
13 telling -- I understand what your argument is. Let me go forward
14 with my -- what I'm going -- what I'm deciding here today. It's not
15 universal, it's not -- but it's pretty darned close to that, I
16 think.

17 Let me tell you what I'm doing. First of all, this is
18 what the Bureau sets forth in response to the list of documents and
19 explanations. These are EB's objections to the EVH direct case
20 exhibits. They were -- they're saying -- I mean, if you're saying
21 that EVH filed a list of documents with explanations demonstrating
22 little or no effort to comply with the presiding judge's directive
23 to identify issues to which EVH's exhibits are relevant. In other
24 words, by issue -- I know what a proffer of relevance is, and I'm
25 not too happy with what I've seen. And that's -- I'm talking to the

1 Havens side of the table now.

2 And then, for example, "Despite the early admission of
3 EVH's initial set of proposed exhibits include materials beyond
4 those with information narrowly focused only on the 16 stations,
5 EVH made no effort to reduce the number of exhibits. The 440 plus
6 exhibits as EVH first identified on September 16th are still there.
7 Plainly EVH has still included within the proposed exhibits those
8 which are not relevant." Okay. Then it goes on.

9 Bullet, "Over 120 copies of unrelated licenses, that is
10 120 plus licenses that are not the licenses at issue for the
11 hearing, Exhibits 90-217."

12 Bullet, "Over 1,200 pages of transcripts submitted in
13 their entirety from a New Jersey antitrust case involving parties
14 who are not parties to the instant proceeding." By the way, I never
15 saw any pro se representation in the New Jersey antitrust case.

16 Third bullet, "At least two exhibits that appear to be
17 copies of other EVH exhibits. Compare Exhibits 47 and 49, compare
18 Exhibits 256 and 258."

19 Fourth bullet, "A trial exhibits index that mislabels the
20 majority of EVH's exhibits. That is, EVH appears to have submitted
21 as a descriptive title of its exhibits the PDF file name that EVH
22 itself created for the documents, and not the actual titles, labels
23 appearing on the documents themselves, or even a fair description.
24 This renders the trial exhibits index effectively useless.

25 In addition, 58 EVH exhibits are labeled only as being

1 relevant to 'O,' which is EVH's code for document, document with
2 other information. That's what 'O' means." I'm smitten by that,
3 also.

4 Well, okay, their argument that this is all overly
5 burdensome and wasteful. And then she's citing Rules of Evidence
6 and, you know, focusing in just what each one -- how each of these
7 Rules of Evidence applies, i.e., Rules of Evidence 402, 403, 404,
8 all of which apply in this case. And, of course, hearsay, because
9 Rule 47.1.35 says, "The Rules of Evidence governing civil
10 proceedings in matters not involving trial by juries in the courts
11 of the United States shall govern in formal FCC hearings." I'm
12 paraphrasing, but that's most of the quote. So, this is where it
13 is.

14 These are the ones that I want to rule on. I can rule on
15 these in groupings, and I'm going to do it in a written order. And
16 then there are specific exhibits that we're going to analyze a bit,
17 and give you a specific ruling on. And then, of course, you've got
18 -- how many, you've got 70 that are not objected to.

19 MS. KANE: There are 70, Your Honor. We've identified
20 those --

21 JUDGE SIPPEL: And those come in.

22 MR. STENGER: Your Honor --

23 JUDGE SIPPEL: I'm also giving you the Calabrese witness.
24 You can have him with a few limitations that I will spell out. The
25 other two you can't have, because they have a bias -- they're

1 obviously biased in their testimony, and they don't know anything
2 about Issue G. They've indicated nothing in their representation or
3 statements that show they know anything about it, so they're out,
4 Goad and whoever the other one is.

5 MR. STENGER: Fred Goad, whose testimony, by the way, was
6 cited by the Commission in their order of September 11th when they
7 denied the Choctaw Second Thursday. The Commission cited Fred Goad
8 in their order.

9 JUDGE SIPPEL: Well, that's a different issue.

10 MR. STENGER: Those are credibility witnesses. And to the
11 extent that Maritime's case is based on what it claims its
12 intentions are with respect to these discontinued stations. To me,
13 when someone states an intent, their credibility is important. And
14 I agree that my proffer of those witnesses is that they will say
15 that Maritime lacks credibility. They're character witnesses.

16 JUDGE SIPPEL: I would give absolutely no weight to
17 anything either of those two witnesses said because they have a
18 bias against the principals of Maritime. I mean, they've admitted
19 they have a -- they think the people are very bad people, and that
20 is not a person that's going to be able to honestly testify to
21 character. Character witness is somebody knowledgeable in the
22 community that has a general knowledge, a great understanding of
23 how this person's reputation is in the community for truthfulness,
24 not a person who went into deals that went sour, business deals.
25 That is not a character witness.

1 MR. STENGER: Well --

2 JUDGE SIPPEL: Maybe it's your character witness, but it's
3 not my character witness.

4 MR. STENGER: All right.

5 JUDGE SIPPEL: So, you don't have them.

6 MR. STENGER: They were testifying -

7 JUDGE SIPPEL: There's nothing to talk about.

8 MR. STENGER: Okay.

9 JUDGE SIPPEL: You don't have them.

10 MR. STENGER: Let's go back --

11 JUDGE SIPPEL: Are you listening? Do you understand what
12 I'm saying? You don't have those two witnesses.

13 MR. STENGER: As to the --

14 JUDGE SIPPEL: You have the third witness.

15 MR. STENGER: As to the documents, you read off the list
16 of objections to various categories of documents.

17 JUDGE SIPPEL: I'm giving you an example. That's all I'm
18 doing, for illustration purposes.

19 MR. STENGER: The first category you read, you said that
20 there were many documents that pertain to licenses that are no
21 longer part of Issue G.

22 JUDGE SIPPEL: These are related by the Bureau. That's all
23 I'm doing.

24 MR. STENGER: At the time that we prepared those exhibits,
25 the stipulation hadn't been signed yet, so --

1 MS. KANE: Your Honor --

2 (Simultaneous speech)

3 JUDGE SIPPEL: Let him finish.

4 MS. KANE: Your Honor, he's mischaracterizing the record,
5 because at the time --

6 MR. STENGER: May I please finish?

7 JUDGE SIPPEL: Wait. You have to let the man finish.

8 MR. STENGER: May I please finish?

9 JUDGE SIPPEL: Yes, please be brief.

10 (Simultaneous speech)

11 MR. STENGER: Okay. My -- Maritime's direct case consists
12 of a copy of the stipulation. That's all that Maritime's direct
13 case is, is a copy of the stipulation. The stipulation says that
14 Maritime was supposed to go into ULS and was supposed to delete
15 these 125 stations, some of them in the stipulation says have
16 already been deleted.

17 JUDGE SIPPEL: That's got nothing to do with what we're
18 talking about.

19 MR. STENGER: Well, how can you say that my documents are
20 irrelevant when they haven't deleted the licenses from ULS yet?

21 JUDGE SIPPEL: Yes. This is going back and forth. Let me
22 -- you got -- you're taking up too much air time, Mr. Stenger.

23 MR. STENGER: All right. I apologize.

24 JUDGE SIPPEL: I'm going to ask Mr. Keller --

25 MR. KELLER: This is the second time this question about

1 the ULS come up, and I just want to -- I'm not going to respond to
2 any of this other stuff. I will say something about the ULS.

3 The licenses at this point, without some special
4 arrangements with the Bureau, which I'm not even sure how that
5 works in an ex parte context, cannot be terminated -- cannot be
6 cancelled because these licenses are in renewal. In other words, as
7 far as the ULS is concerned, the licenses have expired; although,
8 there is a pending application to renew them. The ULS, when you go
9 in and try to make any modification to the license, whether you
10 could modify it to delete locations, or to cancel it, the ULS --
11 well, actually, most of these cases it's modification to delete
12 locations, the ULS won't take them because the license being in
13 terminated status. However, that doesn't change a couple of facts.

14 Number one, Your Honor has ruled by granting the
15 stipulation that these licenses are terminated. For purposes of
16 Issue G, they're gone. Number two, that being the case, the
17 presence of those license technically on the database has no
18 adverse effect on Warren Havens, or his companies at all, because
19 the licenses are gone. He can operate freely in those areas where
20 he has geographic licenses. And if he wants, I'll even recommend
21 that Maritime give him a letter indicating that, that he can put
22 within the application he wants to file with the FCC.

23 I'm stating for the record those licenses are gone. The
24 only reason they're still on the database is a technical ULS
25 reason. We will work to try and resolve that, but that's all I have

1 to say.

2 JUDGE SIPPEL: Sounds good to me.

3 MS. KANE: Your Honor --

4 JUDGE SIPPEL: You have something.

5 MS. KANE: Yes, Your Honor.

6 JUDGE SIPPEL: I'm sorry, Ms. Kane.

7 MS. KANE: You had identified that Mr. Calabrese's
8 written direct testimony would come in with some restrictions, and
9 we wanted to renew our objections that we had raised in our written
10 objections to his testimony, that there are several statements that
11 we would ask to be stricken as hearsay. And, again, EVH has
12 provided no response to those objections, so we would ask that
13 those particular statements be stricken from his written direct
14 testimony.

15 JUDGE SIPPEL: If there have been no objections offered by
16 EVH, your request is granted. I want you to submit to me a
17 statement and, of course, to Mr. Stenger and other parties here,
18 with all those specific sentences crossed out so I can see what
19 exactly you have in mind. I don't want to waste the time here.

20 MS. KANE: Understood, Your Honor.

21 JUDGE SIPPEL: But I will grant your request, over and
22 done.

23 MS. KANE: Thank you, Your Honor.

24 JUDGE SIPPEL: Okay. Now -- yes, what else?

25 MS. KANE: Well, since we're on EVH's witnesses, Your

1 Honor, we wanted to raise the question of what is going to happen
2 with regard to the 30-plus additional witnesses that Mr. Stenger
3 identified in his list of witnesses with explanations, to which we
4 also provided written objections.

5 JUDGE SIPPEL: Oh, well, let me hear from Mr. Stenger on
6 that. Briefly, please.

7 MR. STENGER: Well, Your Honor --

8 JUDGE SIPPEL: Yes, sir.

9 MR. STENGER: -- we pointed out that the Bureau chose --
10 and Your Honor has already ruled that they can present their case
11 however they want to present it. Okay? So --

12 JUDGE SIPPEL: That's the way usually things are done.

13 MR. STENGER: I don't want to appear to be not listening
14 to Your Honor's ruling on that, but the fact of the matter is that
15 --

16 JUDGE SIPPEL: Listen to your conscience.

17 MR. STENGER: The Bureau --

18 JUDGE SIPPEL: My God, man.

19 MR. STENGER: But we pointed out that there are numerous
20 relevant witnesses that the Bureau did not call. There are even
21 witnesses that we're surprised that Maritime did not call. I mean,
22 Pinnacle claims that it's providing service to the State of New
23 Jersey Turnpike Authority and Sports Authority.

24 JUDGE SIPPEL: Keep going. I'm listening.

25 MR. STENGER: But New Jersey Turnpike Authority and Sports

1 Authority are not -- there's no testimony from them. Also, you've
2 asked a number of questions to Puget Sound Energy as one of the
3 buyers. There's no written testimony from Puget Sound Energy. So
4 those three witnesses we're kind of at a loss as to why neither
5 party has brought them forward.

6 We're also surprised that Donald DePriest isn't
7 testifying. When you read Reardon's deposition, he says that most
8 of these deals, most of these transactions were ones that he worked
9 on with Mr. DePriest, not Mrs. DePriest. And the other witnesses
10 that we listed are just witnesses who obviously have knowledge as
11 to what the operations were, they're site owners, they're other
12 parties involved.

13 You know, if you're not interested in hearing from any of
14 those witness, the Bureau doesn't want to call any of those
15 witnesses, I'm not sure what else I can do other than suggest that
16 these are witnesses with relevant testimony; particularly, the
17 State of New Jersey, and Puget Sound Energy. I'm at a loss, but
18 Your Honor has ruled that the Bureau can just omit all of these
19 witnesses. They're illustrative of the fact that we're not hearing
20 from anyone at the hearing other than Maritime. We're not even
21 hearing from all of Maritime's counter parties because we're not
22 hearing from Puget Sound, and we're not hearing from New Jersey.

23 MS. KANE: Your Honor --

24 JUDGE SIPPEL: You didn't -- wait a minute.

25 MS. KANE: Just so the record is clear, because I am

1 fearful that we will receive some sort of interlocutory appeal from
2 either Mr. Havens or Mr. Stenger's clients with regard to this.
3 Each of these -- Mr. Stenger asks what more he could have done. His
4 clients and Mr. Havens could have obtained discovery from any one
5 of these number of individuals during the 18 month discovery period
6 we had in this case on Issue G. They chose, instead, to sit back on
7 their hands and not take their own discovery.

8 In fact, you know, Mr. Havens, if you recall, very early
9 in this case was threatened by other parties to remove him as a
10 party, or to limit his participation in this case, and Your Honor
11 was very clear that Mr. Havens, in particular, and his companies
12 were full parties. They had every opportunity and ample time to
13 take discovery of these witnesses, and to present their written
14 direct testimony if they thought it was necessary to call these
15 witnesses as part of this case in an appropriate time in accordance
16 with Your Honor's order.

17 MR. STENGER: I --

18 MS. KANE: They chose not -- they chose not to --

19 JUDGE SIPPEL: Wait just a second. Wait just a second now.

20 MS. KANE: They chose not to do that. They simply waited
21 until the very last minute and then are now trying to impose upon
22 the Bureau the burden of taking witnesses that the Bureau doesn't
23 feel is necessary. That's not appropriate, so for him to ask what
24 more could he have done? His clients and Mr. Havens could have
25 acted as full parties in this case and fully participated.

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1 MR. STENGER: I can't compel direct testimony from these
2 witnesses.

3 JUDGE SIPPEL: No, wait a minute. You could have taken
4 their deposition.

5 MR. STENGER: Well, Puget Sound --

6 JUDGE SIPPEL: We're talking about deposing them. How do
7 you know whether they have anything to say if you don't depose a
8 witness?

9 MR. STENGER: First of all, let me respond. Puget Sound
10 Energy answered interrogatories, and I know what they answered, and
11 I cited that in my motion, but they didn't put in direct testimony
12 from Puget Sound.

13 JUDGE SIPPEL: I didn't ask about Puget Sound. I'm saying
14 why didn't you -- all these 30 witnesses, why did you not depose
15 them? We had this case for quite some time.

16 MR. STENGER: Don't need to depose them.

17 JUDGE SIPPEL: Well, the --

18 (Simultaneous speech)

19 JUDGE SIPPEL: You just want to call them as witnesses?

20 MR. STENGER: In the case of Puget Sound, we know what
21 their testimony is. In the case of the State of New Jersey, we
22 asked for -- my client asked for the documents to back up -- the
23 documents relevant to the claim that Pinnacle is providing service
24 to these New Jersey entities under an FOIA request, because they're
25 supposedly confidential documents.

1 JUDGE SIPPEL: I don't care about that. You didn't take
2 their depositions. It's rarely that I'm going to permit a witness
3 to testify who hasn't been deposed. You didn't even --

4 MR. STENGER: Suppose I had taken--

5 JUDGE SIPPEL: -- offer his testimony. You did not submit
6 a written statement of his testimony signed by the witness under
7 oath or declaration. You didn't do that. Now, why didn't you do
8 that?

9 MR. STENGER: I don't have any ability to compel these
10 witnesses to appear at the hearing. I mean, if they -- first of
11 all, I mean, my -- this is supposed to be --

12 JUDGE SIPPEL: But you want to use them as witnesses.

13 MR. STENGER: I'm suggesting that -

14 JUDGE SIPPEL: They're not going to be used as witnesses
15 if you haven't done those things. If you can't get them, if you
16 can't subpoena them, if you -- you can subpoena them in discovery,
17 you know that. You can ask for a subpoena and I might give it to
18 you, if you show some relevance to it. You didn't do any of those
19 things.

20 I don't know what kind of a game you're playing here.
21 This makes no sense at all. The rules are very specific as to what
22 you have to do in order to put on a case. You have to have a -- if
23 you want a witness, you have -- you did it with Calabrese, whatever
24 his name is. Yes, you did it with him. I've got representation as
25 to what he's going to testify to. I don't have anything like that